

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANT: Guay Family Trust

OBJECTOR: United States of America (USDA Forest
Service)

CASE 41G-0600-R-2022

41G 211894-00

41G 211895-00

41G 211896-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 211894-00, 41G 211895-00, and 41G 211896-00 appeared in the 41G Preliminary Decree. They are irrigation water right claims owned by Guay Family Trust. Claims 41G 211894-00, 41G 211895-00, and 41G 211896-00 received objections from the United States Department of Agriculture Forest Service (the United States) and DNRC issue remarks.

2. On March 1, 2023, the parties filed a Stipulation that resolves the United States' objections. The Stipulation requests that the point of diversion for claim 41G 211895-00 be modified from the SWSWNE of Section 31, 3N, 6W to the NWSENE of Section 31, T3N, R6W. One of the maps in the claim file was copied from the General Land Office Survey dated April 23, 1935. It depicts the point of diversion in the SENE of Section 31, 3N, 6W. It appears that the modification to point of diversion is a clarification and correction of the historical point of diversion from how it was claimed.

3. No changes are requested to claims 41G 211894-00 and 41G 211896-00.

4. The Stipulation indicates that the requested modification to claim 41G 211895-00 resolves the United States' objection to all three claims in this case.

The Stipulation is well supported by the information in the claim file and should be accepted by the court.

5. Each of the claims in this case received the following DNRC issue remarks:

DITCH NAME MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

CLAIM FILED LATE 05/20/1987. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

These remarks are considered notice-only issue remarks. They have served their purpose of providing notice and should be removed from the claims.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The information before the Court overcomes the prima facie status of the point of diversion for claim 41G 211895-00 by a preponderance of the evidence.

2. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

3. The requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

Id.

The issue remarks appearing on the claims in this case do not overcome the prima facie status of the claims. The issue remarks should be removed from the claim abstracts.

RECOMMENDATIONS

1. Claim 41G 211895-00 should be modified as provided above.
2. The issue remarks should be removed from the claims in this case.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Guay Family Trust
6151 View Drive
Park City, UT 84098-6157
(435) 513-2798
Jguay54@gmail.com

Service via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-0476
Jennifer.Najjar@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 211894-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: TRUST, GUAY FAMILY
6151 VIEW DR
PARK CITY, UT 84098 6157

Priority Date: APRIL 16, 1945

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 05/20/1987 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 289.00 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 17.00

Source Name: SPRING, UNNAMED TRIBUTARY OF PAPPAS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	31	3N	6W	JEFFERSON

Period of Diversion: JULY 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: GUAY DITCH 2

Period of Use: JULY 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	12.00		SENE	31	3N	6W	JEFFERSON
2	4.00		NESE	31	3N	6W	JEFFERSON
3	1.00		NWSW	32	3N	6W	JEFFERSON
Total:	17.00						

Remarks:

POINT OF DIVERSION AND PLACE OF USE MOOSE PARK PLACER MINING CLAIM , MINERAL SURVEY NO. 4106.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 211895-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: TRUST, GUAY FAMILY
6151 VIEW DR
PARK CITY, UT 84098 6157

Priority Date: APRIL 16, 1945

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 05/20/1987 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 2.05 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

***Maximum Acres:** 54.00

***Source Name:** PAPPAS CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS SOUTH FORK PIPESTONE CREEK.

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	31	3N	6W	JEFFERSON

Period of Diversion: JULY 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: MCALLISTER DITCH

Period of Use: JULY 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	52.00		SE	31	3N	6W	JEFFERSON
2	2.00		NWSW	32	3N	6W	JEFFERSON

Total: 54.00

Remarks:

POINT OF DIVERSION AND PLACE OF USE MOOSE PARK PLACER MINING CLAIM , MINERAL SURVEY NO. 4106.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 211896-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: TRUST, GUAY FAMILY
6151 VIEW DR
PARK CITY, UT 84098 6157

Priority Date: APRIL 16, 1945

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 05/20/1987 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 17.10 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 9.26

Source Name: SPRING, UNNAMED TRIBUTARY OF PAPPAS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESE	31	3N	6W	JEFFERSON

Period of Diversion: JULY 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: GUAY DITCH 1

Period of Use: JULY 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	9.26		E2SE	31	3N	6W	JEFFERSON

Total: 9.26

Remarks:

POINT OF DIVERSION AND PLACE OF USE MOOSE PARK PLACER MINING CLAIM , MINERAL SURVEY NO. 4106.